

FRIDAY, AUGUST 15, 1997

1383-97

THE HONORABLE KEITH F. SPARKS, Retired Associate Justice of the Court of Appeal, Third Appellate District, is hereby assigned to assist the Court of Appeal, Third Appellate District, as a justice thereof, from August 4, 1997 to October 31, 1997, and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

Dated: August 4, 1997

RONALD M. GEORGE
Chief Justice of California and
Chairperson of the Judicial
Council

Civil

JODI P.

(Not for Publication)

No.

vs.

C026658

SUPERIOR COURT OF EL DORADO COUNTY

EL DORADO COUNTY DEPARTMENT OF SOCIAL SERVICES

ET AL.

The petition is denied.

PUGLIA, P.J.

FRIDAY, AUGUST 15, 1997 CONTINUED

Crim. THE PEOPLE (Not for Publication)

No. vs.

C023466 VALENTIN VIVERO

The judgment is affirmed.

BLEASE, J.

We concur: PUGLIA, P.J.
MORRISON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C021796 DANIEL HOWARD HUNLEY

The judgment is affirmed. The trial court is directed to amend the abstract of judgment in accordance with footnote one of this opinion and to send a copy of the amended abstract to the Department of Corrections.

SCOTLAND, J.

I concur: SIMS, J.

I would remand the case for consideration under *Romero* (see *People v. Milton* (1997) 55 Cal.App.4th 365.)

BLEASE, Acting P.J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C023266 KIENG PHAT LIENG

The judgment is affirmed.

SCOTLAND, J.

We concur: SIMS, J.

I dissent in the denial of remand under Romero. See *People v. Milton* (1997) 55 Cal.App. 4th 365.

BLEASE, Acting P.J.

FRIDAY, AUGUST 15, 1997 CONTINUED

Crim.. THE PEOPLE (Not for Publication)

No. vs.

C019995 VESTER DENNIS HEMM

The judgment is affirmed.

SCOTLAND, J.

I concur: SIMS, J.

I would remand the case to the trial court to exercise its discretion either to reduce the felony to a misdemeanor or to strike the prior. (See People v. Milton (1997) 55 Cal.App.4th 365.)

BLEASE, Acting P.J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C021885 ERIC CURTIS

The convictions are affirmed. The sentence is vacated. The matter is remanded to the trial court for the court to consider in its discretion whether to strike defendant's prior serious felony convictions. If the trial court strikes the priors, it shall resentence defendant. If the trial court declines to strike the priors, it shall reinstate the sentence previously imposed.

NICHOLSON, J.

We concur: PUGLIA, P.J.

RAYE, J.

MONDAY AUGUST 18, 1997

Crim. THE PEOPLE (Not for Publication)
 No. vs.
 C024832 CATHY RACHELLE REED
 The judgment is affirmed.
 RAYE, J
 We concur: SIMS, Acting P.J.
 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
 No. vs.
 C025497 KEVIN DALE MARTIN
 The judgment is affirmed.
 RAYE, J.
 We concur: SIMS, Acting P.J.
 NICHOLSON, J.

TUESDAY, AUGUST 19, 1997

At 9:30 a.m., the court met in the Library & Courts Building to begin its regular court calendar session.

PRESENT: PUGLIA, Presiding Justice
 SCOTLAND, Associate Justice
 MORRISON, Associate Justice
 Bailiff Conrad.
 Calendar called.

Crim. THE PEOPLE
 No. vs.
 C024785 JOHN MORRIS ANDERSON
 Cause called. John E. Virga, argued for Defendant-Appellant. No appearance was made on behalf of Plaintiff-Respondent as argued having been previously waived and approved. Cause submitted.

TUESDAY, AUGUST 19, 1997, CONTINUED

At 9:37 a.m., court recessed. At 9:41 a.m., court reconvened with the same panel except Associate Justice Raye in place of Associate Justice Morrison.

Civil ARMAND R. BIGLER ET AL.

No. vs.

C023297 RUST, ARMENIS & SCHWARTZ

Cause called. Donald M. Wanland, Jr. argued for Plaintiffs/Appellants. Chad A. Schwartz argued for Defendant/Respondent. Cause submitted. (Consolidated with C023645)

Civil ARMAND R. BIGLER ET AL

No. vs.

C023297 RUST, ARMENIS & SCHWARTZ

Cause called. Donald M. Wanland, Jr. argued for Plaintiffs/Appellants. Chad A. Schwartz argued for Defendant/Respondent. Cause submitted. (Consolidated with C023297)

At 10:16 a.m., court recessed. At 10:20 a.m. court reconvened with the same panel except Associate Justice Morrison is place of Associate Justice Scotland.

Civil WILLIAM FLUHARTY

No. vs.

C021772 JACK FLUHARTY

Cause called. John C. Schaller argued for Plaintiff/Appellant. Larry B. Moss, of Moss and Enochian argued for Defendant/Respondent. Cause submitted.

At 10:45 a.m., court recessed. At 10:47 a.m. court reconvened with the same panel except Acting Presiding Justice Scotland in place of Presiding Justice Puglia.

TUESDAY, AUGUST 19, 1997 CONTINUED

Civil AMERICAN RIVER FIRE PROTECTION DISTRICT
No. vs.
C025051 FRANK BRENNAN ET AL.

Cause called. J. Steven Burris, Deputy County Counsel argued for Amicus Curiae. Brenton A. Bleier argued for Plaintiff-Respondent. David G. Knitter, of Knitter & Lopez argued for Defendant-Appellant French. Brian P. Dolin, of Mastagni, Holstedt and Chiurazzi argued for Defendants-Appellants Brennan ET AL. Cause submitted.

At 11:25 a.m., court recessed. At 11:27 a.m. court reconvened with Presiding Justice Puglia, Associate Justice Blease and Associate Justice Sims.

Juvenile In re JACOB S.
No. HUMAN SERVICES AGENCY
C025072 vs.
 VIRGINIA S. ET AL.

Cause called. Theodore S. Goodwin, court appointed counsel argued for Defendant-Appellant Virginia S. Janine Molgaard, Deputy County Counsel argued for Plaintiff-Respondent. No argument requested for Defendant-Appellant Edward S. Cause submitted.

At 11:45 a.m., court recessed. At 11:45 a.m., court reconvened with Presiding Justice Puglia, Associate Justice Blease and Associate Justice Sims.

Juvenile In re WILLIE I.
No. THE PEOPLE
C024700 vs.
 WILLIE I.

Cause called. Gabriele Alger-Greulich, court appointed counsel argued for Defendant-Appellant. Howard E. Moseley, Deputy Attorney General argued for Plaintiff/Respondent. Cause submitted.

Court recessed at 11:53 a.m. until 9:30 a.m. Wednesday, August 20, 1997.

TUESDAY, AUGUST 19, 1997

Juvenile MARK M. (Not for Publication)
No. vs.
C026574 SUPERIOR COURT OF SACRAMENTO COUNTY
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN
SERVICES

The petition and request for a stay are denied.

SIMS, Acting P.J.

We concur: NICHOLSON, J.
RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C022592 TIMOTHY LEE SUDDETH

The judgment is affirmed.

MORRISON, J.

We concur: BLEASE, Acting P.J.
RAYE, J.

Civil FRANKLIN D. EVERETT
No. vs. (Not for Publication)
C024809 GREAT WESTERN BANK ET AL.

The judgment is affirmed.

MORRISON, J.

We concur: PUGLIA, P.J.
BLEASE, J.

Juvenile PHYLLIS S. (Not for Publication)
No. vs.
C027035 SUPERIOR COURT OF BUTTE COUNTY
BUTTE COUNTY CHILDREN'S SERVICES DIVISION ET AL.

The petition is denied.

SIMS, Acting P.J.

We concur: NICHOLSON, J.
RAYE, J.

WEDNESDAY, AUGUST 20, 1997

At 9:32 a.m., the court met in the Library & Courts Building for a continuation of its regular appeals calendar.

PRESENT: SPARKS, Acting Presiding Justice
SIMS, Associate Justice
RAYE, Associate Justice

Bailiff Jones.
Calendar called.

Civil MYERS BROTHERS ET AL.
No. vs.
C022438 COMET RICE, INC. ET AL.

Cause called. Andrew H. Lange, of Lange and Lange argued for Plaintiffs-Appellants. Philip S. Keith, of Amen and Keith argued for Defendants-Respondents. H. Stanton Orser appeared on behalf of Defendants-Respondents but did not argue. Cause submitted.

Civil ROBERTA CAMPOS
No. vs.
C021883 ELOISE ANDERSON ETC. ET AL.

Cause called. Tom Weathered argued for Plaintiff-Appellant with additional citations. Thomas Yanger, Deputy Attorney General argued for Defendants-Respondents. Cause submitted.

At 10:22 a.m., court recessed. At 10:26 a.m. court reconvened with the same panel except Associate Justice Nicholson in place of Associate Justice Raye.

WEDNESDAY, AUGUST 20, 1997 CONTINUED

Civil ROBERT P. BOGETTI
No. vs.
C024525 BANK OF AMERICA NT&SA ET AL.

Cause called. Robert Mehlhaff, of Mehlhaff and Hay argued for Plaintiffs-Appellants with additional citations. Teri H. Ashby argued for Defendants-Respondents with additional citations. Phillip J. Campbell, of Weintraub, Genshlea and Sproul appeared on behalf of Defendants-Respondents but did not argue. Cause submitted.

At 10:46 a.m., court recessed. At 10:51 a.m. court reconvened with Acting Justice Blease, Associate Justice Sims and Associate Justice Scotland.

Civil WILLIAM BECK
No. vs.
C023415 KENNETH N. MELEYCO ET AL.

Cause called. William W. Hale, of Mayall, Hurley, Knutsen, Smith and Green argued for Defendants-Appellants. Robert D. Nelson, of Parish & Nelson argued for Plaintiff-Respondent. Cause submitted.

At 11:04 a.m., court recessed. At 11:06 court reconvened with same panel except Acting Justice Sparks in place of Acting Justice Blease.

Civil DOUGLAS v. SHAW
No. vs.
C021828 REGENTS OF THE UNIVERSITY OF CALIFORNIA

Cause called. Gerald P. Dodson, of Arnold, White and Durkee argued for Defendant-Appellant. James F. Valentine, of Arnold, White and Durkee appeared on behalf of Defendant-Appellant but did not argue. P. Martin Simpson, Jr. appeared on behalf of Defendant-Appellant but did not argue. Lynne M. Yerkes, of Miller, Starr and Regalia argued for Plaintiff-Respondent with additional citations. Marvin B. Starr, of Miller, Starr and Regalia appeared on behalf of Plaintiff-Respondent but did not argue. Cause submitted.

At 11:26 a.m., court recessed. At 11:41 court reconvened with Acting Justice Scotland, Associate Justice Nicholson and Associate Justice Morrison.

WEDNESDAY, AUGUST 20, 1997 CONTINUED

Civil SUNNYVALE ELEMENTARY SCHOOL DISTRICT ET AL.

No. vs.

C020177 KATHLEEN CONNELL, AS CONTROLLER, ETC.

Cause called. Shelleyanne W.L. Chang, Deputy Attorney General argued for Defendant-Appellant. Thomas M. Griffin, argued for Plaintiffs-Respondents. Cause submitted.

At 12:03 p.m., court recessed. At 12:05 a.m. court reconvened with Acting Justice Blease, Associate Justice Scotland and Associate Justice Morrison.

Crim. THE PEOPLE

No. vs.

C020494 RHONDA JEAN WILSON

Cause called. Deborah Redican Schulte, court appointed counsel argued for Defendant-Appellant with additional citations. Alan Ashby, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 12:10 p.m., court recessed. At 2:00 p.m. court reconvened with the same panel except Associate Justice Sparks in place of Associate Justice Morrison.

Crim. THE PEOPLE

No. vs.

C023003 HECTOR SANCHEZ LEYVA

Cause called. Manuel J. Baglanis, court appointed counsel argued for Defendant-Appellant. No appearance was made on behalf of Plaintiff-Respondent argued having been previously waived and approved. Cause submitted.

At 2:22 p.m. court recessed. At 2:24 p.m. court reconvened with the same panel except Associate Justice Sims in place of Associate Justice Scotland.

Civil	EARL W. ANDERSON ET AL.
No.	vs.
C021112	D & D KAYE, INC. ET AL.
	Cause called. Michael Kaye argued for Defendants-Appellants. Lynn Stulz, argued for Plaintiffs-Respondents. Cause submitted. (Consolidated w/C021945 and C022802)

Civil	EARL W. ANDERSON ET AL.
No.	vs.
C021945	D & D KAYE, INC. ET AL.
	Cause called. Michael Kaye argued for Defendants-Appellants. Lynn Stulz argued for Plaintiffs-Respondents. Cause submitted. (Consolidated w/C021112 and C022802)

Civil EARL W. ANDERSON ET A.
No. vs.
C022802 D & D KAYE, INC. ET AL.

 Cause called. Michael Kaye argued for Defendants-Appellants.
 Lynn Stulz argued for Plaintiffs-Respondents. Cause submitted.
 (Consolidated w/C021112 and C021945)

Court recessed at 3:12 p.m. until 9:30 a.m., Friday, August 22, 1997.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C025838 LLOYD HOWARD MCNALLIE
Judgment is affirmed.
SIMS, Acting P.J.
We concur: NICHOLSON, J.
RAYE, J.

WEDNESDAY, AUGUST 20, 1997 CONTINUED

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024453 BRYAN VERN ANTONSON

Judgment is affirmed.

NICHOLSON, J.

We concur: DAVIS, Acting P.J.

RAYE, J.

Crim. THE PEOPLE (Certified for Publication)

No. vs.

C023509 FRANK WYNN PROTHERO

The judgment (order of probation) is vacated and the matter is remanded to the trial court for further proceedings consistent with this opinion.

RAYE, J.

We concur: NICHOLSON, Acting P.J.

SPARKS, J.*

Crim. THE PEOPLE (Not for Publication)

No. vs.

C022719 BENNY JAMES GUEVARA

The conviction is affirmed, the sentence is vacated, the matter is remanded to the trial court for the purpose of allowing the court to exercise its discretion whether to strike defendant's prior serious felony convictions. If the trial court strikes the priors, it shall resentence defendant. If the trial court declines to strike the priors, it shall reinstate the sentence previously imposed.

MORRISON, J.

I concur: SPARKS, J.

I concur in the opinion except as to part I, from which I dissent.

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SCOTLAND, Acting P.J.

THURSDAY, AUGUST 21, 1997

Crim. THE PEOPLE

No. vs.

C021385 DANNY LEE MEAKINS

By the Court:

Appellant's petition for rehearing is denied.

Dated: August 21, 1997

DAVIS, Acting P.J.

Civil VORTRAN CORPORATION

No. vs.

C018815 VORTRAN MEDICAL TECHNOLOGY INC.

By the Court:

Appellant and Cross-Respondent Vortran Corporation's petition for rehearing is denied.

Dated: August 21, 1997

BLEASE, Acting P.J.

FRIDAY, AUGUST 22, 1997

At 9:32 a.m., the court met in the Library & Courts Building for a continuation of its regular appeals calendar.

PRESENT: PUGLIA, Presiding Justice
SIMS, Associate Justice
MORRISON, Associate Justice

Bailiff Palmer.
Calendar called.

Civil TERRY B. GRIER

No. vs.

C024083 SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Cause called. Stephen F. Boutin, of Boutin, Dentino, Gibson and Di Giusto argued for Plaintiff-Appellant. Ann M. Murray, of Kronick, Moskovitz, Tiedemann and Girard argued for Defendant-Respondent. Cause submitted.

FRIDAY, AUGUST 22, 1997 CONTINUED

Crim. THE PEOPLE
No. vs.
C022618 VERNON SAMUEL ADAMS ET AL.

Cause called. Manual J. Baglanis, court appointed counsel argued for Defendant-Appellant Adams. Virna DePaul-Meyers, Deputy Attorney General argued for Plaintiff-Respondent. No appearance were made on behalf of Defendant-Appellant Tinsley. Cause submitted.
(Consolidated w/C023750)

Crim. THE PEOPLE
No. vs.
C023750 KAREN LYNN TROUT

Cause called. Susan Shors, court appointed counsel argued for Defendant-Appellant. Virna DePaul-Meyers, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.
(Consolidate w/C022618)

At 10:28 a.m., court recessed. At 10:34 a.m. court reconvened with Acting Presiding Justice Sims, Associate Justice Raye and Associate Justice Morrison.

Juvenile In re BRITTANY C. ET AL.
No. DEPARTMENT OF HEALTH AND HUMAN SERVICES
C024801 vs.
THERESA D.

Cause called. Theresa D. argued for herself as Defendant-Appellant. in pro per. Lilly C. Frawley, Deputy County Counsel argued for Plaintiff-Respondent. Cause submitted.

At 10:37 a.m., court recessed. At 10:37 a.m. court reconvened with Presiding Justice Puglia, Associate Justice Sims and Associate Justice Raye.

FRIDAY, AUGUST 22, 1997 CONTINUED

Civil SACRAMENTO FIRST NATIONAL BANK
No. vs.
C021231 ENTERPRISE MECHANICAL, INC. ET AL.

Cause called. Donald M. Wanland, Jr., of Wanland & Bernstein argued for Defendants-Appellants Enterprise Mechanical et al with additional citations. Samy S. Henein, of Suppa, Highnote & Lee argued for Defendant-Appellant Conkey Companies. Debra D. Roberts, of Hayne R. Mayer and Associates argued for Plaintiff-Respondent. Cause submitted.

At 11:32 a.m., court recessed. At 2:05 p.m. court reconvened with Acting Presiding Justice Sims, Associate Justice Raye and Associate Justice Morrison.

Civil STATE OF CALIFORNIA ET AL.
No. vs.
C023326 SUPERIOR COURT, SAN JOAQUIN COUNTY
 JEFFERY TYNES

Cause called. Gail Cecchettine Whaley, of Schachter, Kristoff, Orenstein & Berkowitz argued for Petitioners with additional citations. John Adkisson, of Schachter, Kristoff, Orenstein & Berkowitz appeared on behalf of Petitioners but did not argue. Linda S. Mitlyng argued for Real Parties in Interest. William B. Phillips appeared on behalf of Real Parties in Interest but did not argue. Cause submitted.

Court recessed at 2:42 p.m. until 9:30 a.m.. Monday, August 25, 1997.

FRIDAY, AUGUST 22, 1997 CONTINUED

Civil HUGH P. CAMPBELL (Certified for Publication)
No. vs.
C023691 CALIFORNIA STATE PERSONNEL BOARD ET AL.
 CALIFORNIA DEPARTMENT OF GENERAL SERVICES
 THE COURT:

For good cause it now appears that the opinion in the above captioned case filed herein on July 28, 1997, should be published in the Official Reports and it is so ordered.

FOR THE COURT:

PUGLIA, P.J.
BLEASE, J.
DAVIS, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C024697 ALTON ALONZO BROWN

The judgment is affirmed.

CALLAHAN, J.

We concur: PUGLIA, P.J.
SCOTLAND, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C025090 JOHN ROBERT CRUZ

The judgment is affirmed.

DAVIS, J.

We concur: PUGLIA, P.J.
NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C025329 SCOT HARRY STRAITS

The judgment is affirmed.

NICHOLSON, J.

We concur: PUGLIA, P.J.
DAVIS, J.

FRIDAY, AUGUST 22, 1997 CONTINUED

Juvenile No. C026319	In re KELLY MAURICE R. III, A person coming under the Juvenile Court Law DEPARTMENT OF HUMAN SERVICES vs. (Not for Publication) KELLY MAURICE R. II The judgment is affirmed. NICHOLSON, J. We concur: PUGLIA, P.J. DAVIS, J.
Crim. No. C025714	THE PEOPLE (Not for Publication) vs. FREDDIE LEE SMITH The judgment is affirmed. NICHOLSON, J. We concur: SIMS, Acting P.J. RAYE, J.
Juvenile No. C026939	DAWN E. (Not for Publication) vs. SUPERIOR COURT OF BUTTE COUNTY CHILDREN'S SERVICES DIVISION ET AL. The petition is denied. PUGLIA, P.J. We concur: DAVIS, J. NICHOLSON, J.
Juvenile No. C026831	NANCY D. (Not for Publication) vs. SUPERIOR COURT OF SACRAMENTO COUNTY SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. The petition and request for a stay are denied. SIMS, Acting P.J. We concur: NICHOLSON, J. RAYE, J.

FRIDAY, AUGUST 22, 1997 CONTINUED

Crim. THE PEOPLE (Not for Publication)
No. vs.
C022951 JAMES JONES

The judgment of conviction is affirmed. The sentence is vacated and the matter is remanded to the trial court for the purpose of allowing the court to consider whether to strike defendant's prior serious felony conviction. If the trial court strikes the prior, it shall resentence defendant. If the trial court declines to strike the prior, it shall reinstate the sentence previously imposed. In either event, it shall not award any presentence credit.

DAVIS, Acting P.J.

We concur: NICHOLSON, J.
RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C022982 GARY HARLYN HARRIS

The judgment of conviction is affirmed. The sentence is vacated and the matter is remanded to the trial court for the purpose of allowing the court to consider whether to strike defendant's prior serious felony convictions. If the trial court strikes one or both priors, it shall resentence defendant. If the trial court declines to strike the priors, it shall reinstate the sentence previously imposed.

NICHOLSON, J.

We concur: DAVIS, Acting P.J.
RAYE, J.

FRIDAY, AUGUST 22, 1997 CONTINUED

Crim. THE PEOPLE (Not for Publication)
No. vs.
C023038 KENNETH EARL SCOTT

The judgment of conviction is affirmed. The sentence is vacated and the matter is remanded to the trial court for the purpose of allowing the court to consider whether to strike defendant's prior serious felony conviction. If the trial court strikes the prior, it shall resentence defendant. if the court declines to strike the prior, it shall reinstate the sentence previously imposed.

NICHOLSON, J.

We concur: DAVIS, Acting P.J.
RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C021909 JOHN EVAN HODGES

The conviction is affirmed. The sentence is vacated, and the matter is remanded to permit the trial court to exercise its discretion whether to strike any of defendant's prior serious felony convictions. If the trial court strikes two or more of the prior convictions, it shall resentence defendant. If the trial court declines to strike the prior convictions, it shall reinstate the sentence previously imposed. The trial court is directed to prepare a new abstract of judgment reflecting that defendant was awarded 250 days credit for actual time served, and to forward a certified copy of the abstract to the Department of Corrections.

SCOTLAND, Acting P.J.

We concur: SPARKS, J.*
MORRISON, J.

FRIDAY, AUGUST 22, 1997 CONTINUED

Crim. THE PEOPLE (Not for Publication)
No. vs.
C022521 TIMOTHY LEON PARLER

The conviction is affirmed. The sentence is vacated , and the matter is remanded to permit the trial court to exercise its discretion whether to strike any of defendant's five prior serious felony convictions. If the trial court strikes four or more of the prior convictions, it shall resentence defendant. If the court declines to strike at least four of the prior convictions, it shall reinstate the sentence previously imposed.

SCOTLAND, Acting P.J.

We concur: SPARKS, J.*
MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C023822 CURTIS JAMES VOIGHT

Defendant's sentence is vacated and the matter remanded to the trial court to provide the court with the opportunity to exercise its discretion to strike defendant's "strike" and resentence defendant. If the court declines to do so it is to reinstate the sentence. The judgment/conviction is affirmed.

DAVIS, J.

I concur: RAYE, J.
.... I would affirm the judgment in its entirety.
SIMS, Acting P.J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C022723 MICHAEL DAVID WATSON

Defendant's sentence is vacated and the matter remanded to the trial court to provide the court with the opportunity to exercise its discretion to strike defendant's "strike" and resentence defendant. If the court declines to do so it is to reinstate the sentence. The judgment is affirmed.

DAVIS, J.

I concur: RAYE, J.
....I would affirm the judgment in its entirety.
SIMS, Acting P.J.

MONDAY, AUGUST 25, 1997

At 9:32 a.m., the court met in the Library & Courts Building for a continuation of its regular appeals calendar.

PRESENT: SPARKS, Acting Presiding Justice
SIMS, Associate Justice
DAVIS, Associate Justice

Bailiff Palmer.
Calendar called.

Civil FORTY-NINER TRUCK PLAZA, INC. ET AL.
No. vs.
C021946 UNION OIL COMPANY OF CALIFORNIA ET AL.

Cause called. Lewis R. Clayton, of Paul, Weiss, Rifkind, Wharton & Garrison argued for Defendants-Appellant-X-Respondents National et al. Kenneth L. Waggoner, of Brobeck, Phleger & Harrison argued for Defendant-Appellant-X-Respondent Union oil with additional citations. John J. Wasilezyk appeared on behalf of Defendant-Appellant-X-Respondent Union oil but did not argue. William L. Taylor, of Taylor, Thiemann & Aitken argued for Plaintiffs-Respondents-X-Appellants. John A. Trocki appeared on behalf of Plaintiffs-Respondents-X-Appellants but did not argue. Cause submitted.

At 11:30 a.m., court recessed. At 11:33 a.m. court reconvened with the same panel except Associate Justice Scotland in place of Associate Justice Sims.

Crim. THE PEOPLE
No. vs.
C021113 BILLY RAY VADEN

Cause called. Lloyd H. Riley argued for Defendant-Appellant. No appearance was made on behalf of Plaintiff-Respondent as argued having been previously waived and approved. Cause submitted.

At 11:45 a.m., court recessed. At 11:46 a.m. court reconvened with the same panel except Presiding Justice Puglia in place of Associate Justice Davis.

MONDAY AUGUST 25, 1997 CONTINUED

Civil WILLIAM JACKS, JR.
No. vs.
C022416 SUPERIOR COURT, PLUMAS COUNTY
 BOARD OF SUPERVISORS, ETC. ET AL.

Cause called. James Donald argued for Petitioner. M. Anthony Soares, of Minasian, Minasian, Minasian, Spruance, Baber, Meith & Soares argued on behalf of Real Parties In Interest Board of Supervisors, Etc. Et Al. Cause submitted.

At 12:09 p.m., court recessed. At 12:10 p.m. court reconvened with Acting Presiding Justice Sims, Associate Justice Raye and Associate Justice Morrison.

Civil BARBARA J. SWIST
No. vs.
C024550 TRIMONT LAND COMPANY

Cause called. Bradley Paul Elley argued for Plaintiff-Appellant. John Torkel Hill, of Barrett, Harper, Woll, Raatz & Stenson argued for Defendant-Respondent. Cause submitted.

At 12:26 p.m., court recessed. At 12:28 p.m. court reconvened with Acting Presiding Justice Scotland, Associate Justice Nicholson and Associate Justice Morrison.

Civil STATIONARY ENGINEERS LOCAL 39 ET AL.
No. vs.
C020459 CIVIL SERVICE COMMISSION, ETC.
 COUNTY OF SACRAMENTO

Cause called. Timothy D. Weinland argued for Real Party In Interest-Appellant County Counsel. Matthew J. Gauger, of Van Bourg, Weinberg, Roger & Rosenfeld argued for Plaintiffs-Respondents. Submission Deferred.

MONDAY, AUGUST 25, 1997 CONTINUED

At 12:34 p.m., court recessed. At 12:34 p.m. court reconvened with Presiding Justice Puglia, Associate Justice Sparks and Associate Justice Sims.

Civil CALIFORNIA TEACHERS' ASSOCIATION ET AL
No. vs.
C019678 STATE OF CALIFORNIA ET AL.

Cause called. Karen Leaf, Deputy Attorney General argued for Defendants-Appellants. Ernest H. Tuttle, of Tuttle & McCloskey argued for Plaintiffs-Respondents. Cause submitted.

At 1:06 p.m. court recessed. At 2:01 p.m. court reconvened with Associate Justice Morrison in place of Associate Justice Sims.

Civil ERIC S., A Minor, ETC.
No. vs.
C022974 REDDING SPECIALTY HOSPITAL

Cause called. Lise A. Young argued for Plaintiff-Appellant. Michael S. Coleman appeared on behalf of Plaintiff-Appellant but did not argue. Mark D. Norcross, of Moss & Enochian argued for Defendant-Respondent. Cause submitted.

At 2:16 p.m., court recessed. At 2:17 p.m. court reconvened with Associate Justice Raye in place of Associate Justice Morrison.

Civil JANET LAURIE JOSEPH ET AL.
No. vs.
C019732 EAST QUINCY SERVICES DISTRICT

Cause called. Michael Dashjian argued for Defendant-Appellant-Cross-Respondent. Robert J. Zernich appeared on behalf of Defendant-Appellant-Cross-Respondent. Kimball J.P. Sargeant argued on behalf of Plaintiffs-Respondents-X-Appellants. Les Hait appeared on behalf of Plaintiffs-Respondents-X-Appellants but did not argue. Cause submitted.

Court adjourned at 2:47 p.m. until 9:30 a.m., Monday, September 15, 1997

MONDAY, AUGUST 25, 1997 CONTINUED

Crim. THE PEOPLE (Not for Publication)

No. vs.

C023669 STEPHEN MICHAEL STEWART

The judgment is modified to impose a restitution fine of \$200. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting this modification and to forward a certified copy of the amended abstract to the Department of Corrections.

SCOTLAND, J.

We concur: PUGLIA, P.J.
MORRISON, J.

Civil EARL W. ANDERSON ET AL. (Not for Publication)

No. vs.

C021112 D & D KAYE, INC. ET AL

C021945 Summary adjudication in favor of the Andersons on the seventh
C022802 cause of action (declaratory relief to declare Kaye v. Anderson settlement agreement void) is affirmed. The judgment in C021112 is otherwise reversed. The postjudgment orders concerning attorney's fees are reversed as premature. (C021945 and C022802) The parties shall bear their own costs on appeal.

SIMS, J.

We concur: BLEASE, Acting P.J.
SPARKS, J.

Civil ROBERT P. BOGETTI ET AL (Not for Publication)

No. vs.

C024525 BANK OF AMERICA, NT&SA ET AL.

The judgment is affirmed. Respondents shall recover their costs on appeal.

SIMS, Acting P.J.

We concur: NICHOLSON, J.
SPARKS, J.

MONDAY, AUGUST 25, 1997 CONTINUED

Juvenile In re PATRICK G. ET AL., Persons coming under the Juvenile Court Law
 No. DEPARTMENT OF HEALTH AND HUMAN SERVICES
 C026020 vs. (Not for Publication)
 SANDRA G. ET AL.

The orders of the Juvenile court are affirmed.

RAYE, J.

We concur: BLEASE, Acting P.J.

DAVIS, J.

Civil CRAIG SOMMERFIELD (Certified for Publication)
 No. vs.
 C023886 DWIGHT HELMICK JR., ETC.

The judgment is reversed and the trial court is directed to enter judgment denying the petition for writ of mandate. Appellant shall recover costs on appeal.

RAYE, J.

We concur: NICHOLSON, Acting P.J.

MORRISON, J.

TUESDAY, AUGUST 26, 1997

Civil RUTH SCHERFENBERG (Not for Publication)
 No. vs.
 C024127 TONY LOPES ET UX as Trustees etc. et al.

The plaintiff's motion for judicial notice is denied. The judgment is affirmed.

DAVIS, Acting P.J.

We concur: RAYE, J.

CALLAHAN, J.

We concur: PUGLIA, P.J.
SIMS, J.

The judgment is reversed and the matter remanded with directions to enter a new order abating this action during the pendency of the City's eminent domain action. The City shall recover costs of appeal.

DAVIS, Acting P.J.

The judgment (order granting probation) is affirmed.
MORRISON, J.

The judgment is affirmed.

BLEASE, Acting P.J.

..... SCOTLAND, J.

TUESDAY, AUGUST 26, 1997 CONTINUED

Civil MYERS BROTHERS ET AL. (Not for Publication)
 No. vs.
 C022438 COMET RICE, INC. ET AL.
 The order denying class certification is affirmed.
 RAYE, J.
 We concur: SIMS, Acting P.J.
 SPARKS, J.

Juvenile In re JACOB S., A person coming under the Juvenile Court Law
 No. HUMAN SERVICES AGENCY
 C025072 vs. (Not for Publication)
 VIRGINIA S. ET AL.
 The judgment is reversed.
 BLEASE, J.
 We concur: PUGLIA, P.J.
 SIMS, J.

Crim. THE PEOPLE (Not for Publication)
 No. vs.
 C024519 JOSEPH PAUL DESTEFANI
 The purported appeal from the judgment entered on August 1, 1996,
 is dismissed. Treating the appeal as a petition for writ of habeas corpus, the
 petition is granted. The judgment is modified to impose a concurrent term
 of imprisonment in accordance with the trial court's order of March 28,
 1996. As modified, the judgment is affirmed. The trial court is directed to
 prepare a new abstract of judgment reflecting this modification, and to
 forward a certified copy of the new abstract to the Department of
 Corrections.
 SCOTLAND, J.
 We concur: DAVIS, Acting P.J.
 CALLAHAN, J.

TUESDAY, AUGUST 26, 1997 CONTINUED

Civil ROBERTA CAMPOS (Not for Publication)

No. vs.

C021883 ELOISE ANDERSON ETC. ET AL.

The judgment is affirmed. Defendant shall recover costs on appeal.

RAYE, J.

We concur: SIMS, Acting P.J.

SPARKS, J.

Juvenile In re WILLIE I., A person under the Juvenile Court Law

No. THE PEOPLE (Not for Publication)

C024700 vs.

WILLIE I.

The judgment (order) is modified to provide for a maximum
confinement period of three years.

BLEASE, J.

We concur: PUGLIA, P.J.

SIMS, J.

WEDNESDAY, AUGUST 27, 1997

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024057 MICHAEL SHAWN WALKER

The judgment is affirmed.

SIMS, J.

We concur: BLEASE, Acting P.J.

CALLAHAN, J.

Civil BARBARA J. SWIST

No. vs.

C024550 TRIMONT LAND COMPANY

The judgment is affirmed.

SIMS, Acting P.J.

We concur: RAYE, J.

MORRISON, J.

WEDNESDAY, AUGUST 27, 1997 CONTINUED

Civil DOUGLAS S. MAHRER (Not for Publication)

No. vs.

C025487 DEL SAITO ET AL.

The judgment is affirmed. Defendants shall recover their costs on appeal.

SIMS, J.

We concur: BLEASE, Acting P.J.

CALLAHAN, J.

Juvenile In re CODY S. ET AL., Persons coming under the Juvenile Court Law

No. DEPARTMENT OF SOCIAL WELFARE

C026129 vs. (Not for Publication)

STEPHANIE S. ET AL.

The orders of the juvenile court are affirmed.

DAVIS, J.

We concur: BLEASE, Acting P.J.

RAYE, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C020494 RHONDA JEAN WILSON

The conviction is affirmed. The sentence is vacated. The matter is remanded to the trial court for the purpose of allowing the court to exercise its discretion whether to strike defendant's prior serious felony conviction and the prior prison term enhancements. (See Part V, ante.)

BLEASE, Acting P.J.

We concur: SCOTLAND, J.

MORRISON, J.

Civil CITY OF WHEATLAND (Not for Publication)

No. vs.

C025652 CHARLES WILSON

The judgment (order) is affirmed.

BLEASE, Acting P.J.

We concur: SCOTLAND, J.

NICHOLSON, J.

WEDNESDAY, AUGUST 27, 1997 CONTINUED

Civil JOSEPH W. SEARS ET AL. (Not for Publication)
No. vs.
C025082 COUNTY OF EL DORADO ET AL.

In light of our discussion above, it is unnecessary to discuss any other issues that plaintiffs raise. The part of the judgment in favor of County stating that the first, second, third, fourth, fifth, and sixth causes of action of plaintiffs' first amended complaint are barred by the release is reversed. The part of the judgment incorporating the summary adjudication of the seventh, eighth, and ninth causes of action by the plaintiffs' first amended complaint is affirmed. The part of the judgment awarding costs to County, and the post-judgment order awarding County \$38,602.28 (plus interest) in attorney fees and costs are reversed. Plaintiffs are awarded their costs on appeal.

DAVIS, J.

We concur: PUGLIA, P.J.
BLEASE, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C024955 FLOYD EUGENE ANDREW
 The judgment is affirmed.

CALLAHAN, J.

We concur: BLEASE, Acting P.J.
SIMS, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C022618 VERNON SAMUEL ADAMS ET AL.
 The judgments are affirmed.

SIMS, J.

We concur: PUGLIA, P.J.
MORRISON, J.

THURSDAY, AUGUST 28, 1997

Civil PAUL LUMBEF

No. vs.

C026688 ALOYSIUS G. FINN

By the Court:

Appellant's petition for rehearing is denied.

August 28, 1997

PUGLIA, P.J.

Civil BANK OF CALIFORNIA

No. vs.

C026246 JAMES GRAY ROWDEN ET AL.

By the Court:

Appellants' petition for rehearing is granted. The decision filed on July 29, 1997, is vacated and the appeal is reinstated.

Appellants' opening brief is due to be served and filed on or before September 4, 1997.

Dated: August 28, 1997

PUGLIA, P.J.

Juvenile In re MICHAEL C., A person coming under the Juvenile Court Law

No. THE PEOPLE (Not for Publication)

C024089 vs.

MICHAEL C.

The judgment (order) of the juvenile court is affirmed.

MORRISON, J.

We concur: PUGLIA, P.J.

CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C023097 LONNIE RAY HAYES

The judgment is affirmed.

SIMS, J.

We concur: BLEASE, Acting P.J.

SCOTLAND, J.

THURSDAY, AUGUST 28, 1997 CONTINUED

Civil STATE OF CALIFORNIA ET AL. (Not for Publication)
No. vs.
C023326 SUPERIOR COURT, SAN JOAQUIN COUNTY
 JEFFERY TYNES

 The petition for writ of mandate is denied. The alternative writ is
discharged and the case is remanded to the superior court for trial. Plaintiff
shall recover his costs herein.

 RAYE, J.

We concur: SIMS, Acting P.J.
 MORRISON, J.

Juvenile In re FRANK E., A person coming under the Juvenile Court Law
No. THE PEOPLE (Not for Publication)
C025025 vs.
 FRANK E.

 The judgment is affirmed.

 SIMS, J.

We concur: BLEASE, Acting P.J.
 MORRISON, J.

Civil SACRAMENTO FIRST NATIONAL BANK (Not for Publication)
No. vs.
C021231 ENTERPRISE MECHANICAL, INC. ET AL.
 The judgments are affirmed.

 RAYE, J.

We concur: PUGLIA, P.J.
 SIMS, J.

Juvenile In re BRITTANY C. ET AL., Persons under the Juvenile Court Law
No. DEPARTMENT OF HEALTH AND HUMAN SERVICES
C024801 vs. (Not for Publication)
 THERESA D.

 The orders of the juvenile court are affirmed.

 RAYE, J.

We concur: SIMS, Acting P.J.
 MORRISON, J.

THURSDAY, AUGUST 28, 1997 CONTINUED

Juvenile No. C025811	In re STARCIAN B., A person coming under the Juvenile Court Law THE PEOPLE vs. STARCIAN B. The judgment is affirmed.	(Not for Publication)
		BLEASE, Acting P.J.
	We concur: SIMS, J. SCOTLAND, J.	
Juvenile No. C025691	In re NIESA Y., A person coming under the Juvenile Court Law SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES vs. VINCENTIA Y. The orders are affirmed.	(Not for Publication)
		PUGLIA, P.J.
	We concur: SCOTLAND, J. CALLAHAN, J.	
Crim. No. C025621	THE PEOPLE vs. RAYMONT LEVON DATES The judgment is affirmed.	(Not for Publication)
		BLEASE, Acting P.J.
	We concur: MORRISON, J. CALLAHAN, J.	
Civil No. C023416	WILLIAM BECK vs. KENNETH N. MELEYCO ET AL. The judgment is affirmed.	(Not for Publication)
		BLEASE, Acting P.J.
	We concur: SIMS, J. SCOTLAND, J.	

THURSDAY, AUGUST 28, 1997 CONTINUED

Juvenile In re ERIC R. ET AL., Persons coming under the Juvenile Court Law
 No. HUMAN SERVICES AGENCY (Not for Publication)
 C026308 vs.
 ERIC R.

The order terminating appellant's parental rights is affirmed.
 RAYE, J.

We concur: SIMS, Acting P.J.
 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)
 No. vs.
 C023568 RAYMOND VASQUEZ

The judgment is affirmed.

CALLAHAN, J.

We concur: PUGLIA, P.J.
 SIMS, J.

Civil MILLER FAMILY HOME, INC. (Certified for Publication)
 No. vs.
 C025060 DEPARTMENT OF SOCIAL SERVICES

..... For good cause it now appears that the opinion should be
 published in the Official Reports and it is so ordered.

FOR THE COURT:
 NICHOLSON, Acting P.J.
 CALLAHAN, J.

FRIDAY, AUGUST 29, 1997

Juvenile In re RYAN B., A person coming under the Juvenile Court Law
 No. THE PEOPLE (Not for Publication)
 C026226 vs.
 RYAN B.

The judgment is affirmed.

SCOTLAND, J.

We concur: PUGLIA, P.J.
 CALLAHAN, J.

FRIDAY, AUGUST 29, 1997 CONTINUED

Crim. No. C024870	THE PEOPLE vs. RONALD DEAN JOHNSON The judgment is affirmed.	(Not for Publication)
	We concur: PUGLIA, P.J. SCOTLAND, J.	CALLAHAN, J.
Juvenile No. C025803	In re NICHOLAS H., A person coming under the Juvenile Court Law THE PEOPLE vs. NICHOLAS H. The judgment is affirmed.	(Not for Publication)
	We concur: SCOTLAND, J. CALLAHAN, J.	PUGLIA, P.J.
Civil No. C025814	BRANDON CLARK, A minor, ETC. vs. COUNTY OF YUBA ET AL. The judgment is affirmed.	(Not for Publication)
	I concur: SCOTLAND, J. I concur in the result only: NICHOLSON, J.	BLEASE, Acting P.J.
Crim. No. C023234	THE PEOPLE vs. HAROLD CEARCY BAXTER The judgment is affirmed.	(Not for Publication)
	We concur: PUGLIA, P.J. SCOTLAND, J.	CALLAHAN, J.

FRIDAY, AUGUST 29, 1997 CONTINUED

Crim. THE PEOPLE (Not for Publication)
No. vs.
C024831 JERRY GANAS, JR.

The judgment (order granting probation) is affirmed.
BLEASE, Acting P.J.

We concur: MORRISON, J.
CALLAHAN, J.

Civil RICHARD B. HERMAN (Not for Publication)
No. vs.
C024879 COUNTY OF LASSEN ET AL.

The judgment is reversed. The trial court shall enter a judgment granting the petition for a writ of mandate and denying damages. The parties shall bear their own costs of this appeal.
BLEASE, Acting P.J.

I concur: CALLAHAN, J.
I concur in the result: RAYE, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C025234 BENJAMIN JOSPEH SHEPHERD

The judgment is affirmed.
NICHOLSON, J.

We concur: PUGLIA, P.J.
DAVIS, J.

Crim. THE PEOPLE (Not for Publication)
No. vs.
C024785 JOHN MORRIS ANDERSON

The judgment is affirmed.
MORRISON, J.

We concur: PUGLIA, P.J.
SCOTLAND, J.

FRIDAY, AUGUST 29, 1997 CONTINUED

Civil AMERICAN RIVER FIRE PROTECTION DISTRICT
No. vs.
C025051 FRANK BRENNAN ET AL.

The judgment is reversed. Defendants shall recover their costs on appeal.

MORRISON, J.

We concur: SCOTLAND, Acting P.J.
 RAYE, J.

Civil MADELINE O. (Not for Publication)
No. vs.
C026981 SUPERIOR COURT OF SACRAMENTO COUNTY
 SACRAMENTO COUNTY DEPARTMENT OF HEALTH
 AND HUMAN SERVICES ET AL.

The petition is denied.

PUGLIA, P.J.

We concur: RAYE, J.
 MORRISON, J.